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CHAPTER 106

PURCHASING STANDARDS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 12]

11—106.1(80GA,HF534) Authority and scope. This chapter is adopted for the purpose of establishing a system of uniform standards for purchasing services in state government. The department of administrative services has adopted these uniform standards in cooperation with other state agencies as provided for in 2003 Iowa Acts, House File 534, section 29.

The rules address when departments and establishments must use competitive selection to purchase services and when it is acceptable to use a sole source or emergency procurement instead of a competitive selection process. The rules provide a mechanism that allows departments and establishments to use an informal competitive process for purchases of services when the estimated annual value of the contract is less than \$50,000 and when the estimated value of the multiyear contract in the aggregate, including renewals, is less than \$150,000. The rules also include guidance to departments and establishments about additional requirements and procedures they should follow when purchasing services.

11—106.2(80GA,HF534) Applicability. This chapter shall apply to all departments and establishments purchasing services unless otherwise provided by law.

11—106.3(80GA,HF534) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Competitive selection” means a formal or informal process engaged in by a department or establishment to compare provider qualifications, terms, conditions, and prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance, price, or any combination thereof. During a competitive selection process, a department or establishment may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. The lowest priced proposal is not necessarily the best proposal.

“Department and establishment” and *“department”* or *“establishment”* means any executive department, commission, board, institution, bureau, office, or other agency of the state government, except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

“Duration” means the specific length of a service contract.

“Emergency” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the department or establishment must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

“Emergency procurement” means an acquisition of a service or services resulting from an emergency need.

“Formal competition” means a competitive selection process that employs a request for proposal or other competitive selection process authorized by applicable law resulting in a service contract.

“Informal competition” means a streamlined competitive selection process in which a department or establishment makes an effort to contact at least three prospective service providers identified by the purchasing department or establishment as qualified to perform the work described in the scope of work to provide bids or proposals to provide the services the department or establishment is seeking.

“Intergovernmental agreement” means an agreement for services between a department or establishment and any other governmental entity, department or establishment whether federal, state, or local and any department, division, unit or subdivision thereof.

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“Private agency” or *“private agencies”* means an individual or any form of business organization authorized under the laws of this or any other state or under the laws of any foreign jurisdiction.

“Selection documents” means documents prepared for a competitive selection by a department or establishment to purchase services. Selection documents may include requests for proposal, invitations to bid, invitations to bid with best value considerations, invitations to qualify, requests for strategy, auctions, reverse auctions, negotiated selection, or any other type of document a department or establishment is authorized to use that is designed to advise service providers that a department or establishment is interested in procuring services for state government.

“Service” or *“services”* means work performed for a department or establishment or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying

services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or 2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service; equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

“Service contract” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. *“Service contract”* includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

“Service provider” means a vendor that enters into a service contract with a department or establishment.

“Sole source procurement” means a purchase of services in which the department or establishment selects a service provider without engaging in a competitive selection process.

11—106.4(80GA,HF534) Intergovernmental agreements. In the event another governmental entity has resources available to supply a service sought by a department or establishment, the department or establishment may enter into an intergovernmental agreement with the other governmental entity and is not required to use competitive selection.

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11—106.5(80GA,HF534) Use of competitive selection. Departments and establishments shall use competitive selection to acquire services from private agencies when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 106.7(80GA, HF534) or 106.8(80GA,HF534) or another provision of law.

106.5(1) When the estimated annual value of the service contract is equal to or greater than \$50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds \$150,000, a department or establishment shall use a formal competitive selection process to procure the service.

106.5(2) When the estimated annual value of the service contract is equal to or greater than \$5,000 but less than \$50,000 and the estimated value of the multiyear service contract in the aggregate, including any renewals, does not exceed \$150,000, a department or establishment, in its sole discretion, shall use either a formal or informal competitive selection process to engage a service provider.

106.5(3) The requirement to use competitive selection to select a service provider when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000 applies even when the department or establishment purchases services from a private entity and designates the contract it enters into with the private entity as a 28E agreement.

11—106.6 Reserved.

11—106.7(80GA,HF534) Sole source procurements.

106.7(1) When justified. A sole source procurement shall be avoided unless clearly necessary and justifiable. A department or establishment may purchase services using a sole source procurement under the following circumstances:

- a. A department or establishment determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or
- b. The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or
- c. A department or establishment is hiring a service provider to provide peer review services for a

professional licensing board pursuant to Iowa Code chapter 272C; or

d. A department or establishment is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

e. The federal government or other provider of funds for the services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the department's or establishment's use of the funds in a way that restricts the department or establishment to only one service provider; or

f. Applicable law requires, provides for, or permits use of a sole source procurement.

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106.7(2) *Special procedures required for sole source procurements.*

a. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, the head of a department or establishment or designee shall sign the sole source contract or the amendment. Use of sole source procurement does not relieve a department or establishment from negotiating

a fair and reasonable price and thoroughly documenting the procurement action.

b. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, a department or establishment shall be required to complete a sole source justification form. The director of the department or establishment shall sign the sole source justification form. The claim for the first payment on a contract requires a copy of the signed original contract, a copy of the precontract questionnaire, a copy of the sole source justification form, and an original invoice or original claimant signature.

c. The contract for the sole source procurement shall comply with 11 IAC 107.4(8,80GA,HF534), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,80GA,HF534), special terms and conditions.

11—106.8(80GA,HF534) Emergency procurements.

106.8(1) *When justified.* An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or establishment may consider price and availability of the service procured so that the department or establishment obtains the best value for the funds spent under the circumstances. Departments or establishments should attempt to acquire services with as much competition as practicable under the circumstances.

106.8(2) *Special procedures required for emergency procurements.*

a. The head of a department or establishment shall sign all emergency contracts and amendments regardless of value or length of term. If the head of a department or establishment is not available, a designee may sign an emergency contract or amendment. Use of an emergency procurement does not relieve a department or establishment from negotiating a fair and reasonable price and documenting the procurement action.

b. When the value of the service contract exceeds \$5,000, a department or establishment shall be required to complete an emergency justification form. The director of the department or establishment or the director's designee shall sign the emergency justification form.

c. If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with 11 IAC 107.4(8,80GA,HF534), uniform terms and conditions for service contracts, or 11 IAC 107.5(8,80GA,HF534), special terms and conditions.

11—106.9(80GA,HF534) Informal competitive procedures.

106.9(1) When utilizing an informal competition as defined in rule 106.3(80GA,HF534), the department or establishment may contact the prospective service providers in person, by telephone, fax, E-mail or letter. When the department or establishment is not able to locate three prospective service providers, the department or establishment must justify contacting fewer than three service providers. The justification shall be included in the contract file.

106.9(2) A department or establishment may send copies of the scope of work to service providers that it has identified as qualified to perform the work described in the scope of work.

11—106.10 Reserved.

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11—106.11(80GA,HF534) Duration of service contracts.

106.11(1) Each service contract signed by a department or establishment shall have a specific starting and ending date.

106.11(2) Departments and establishments shall not sign self-renewing service contracts that do not have a specific ending date.

106.11(3) A service contract should be competitively selected on a regular basis so that a department or establishment obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including

all optional renewals, shall not exceed a term of six years unless the department or establishment obtains a waiver of this provision pursuant to rule 106.16(80GA, HF534).

11—106.12(80GA, HF534) Additional procedures or requirements.

106.12(1) Departments and establishments, whether utilizing informal or formal competition, shall provide a notice of each procurement for services to the targeted small business Web page located at the Iowa department of economic development's Web site in conformance with Iowa Code section 73.16(2).

106.12(2) Except in an emergency procurement, services shall not be performed pursuant to a service contract for a department or establishment until all parties to the contract have signed the contract.

106.12(3) At the conclusion of the competitive selection process, all service providers shall be required to sign a service contract.

106.12(4) Each department or establishment shall maintain a contracting file for each service contract signed by the department or establishment.

11—106.13 and 106.14 Reserved.

11—106.15(80GA, HF534) Exclusions and limitations.

106.15(1) These rules do not apply to contracts for both goods and services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall departments and establishments designate contracts as contracts for goods to avoid the application of these rules.

106.15(2) Nothing in this chapter is intended to supplant or supersede the requirements adopted by the department of administrative services relating to the processing of claims. Departments or establishments entering into personal services contracts should refer to procedure 240.102 of the department of administrative services, state accounting enterprise policy and procedure manual.

11—106.16(80GA, HF534) Waiver procedure.

106.16(1) For the purpose of this chapter, a "waiver or variance" means an action by the director of the department of administrative services that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a department or establishment when the department or establishment establishes good cause for a waiver or variance of the rule. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

106.16(2) Requests for waivers. A department or establishment seeking a waiver shall submit a written request for a waiver to the director. The written request shall identify the rule for which the department or establishment seeks a waiver, the contract or class of contracts for which the department or establishment seeks a waiver, and the reasons that the department or establishment believes justify granting the waiver.

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106.16(3) Criteria for waiver. In response to a request for a waiver submitted by a department or establishment, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the department or establishment has established good cause for waiving the requirements of the rule. "Good cause" includes, but is not limited to, a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically feasible than a six-year contract in light of the service being purchased by the department or establishment.

11—106.17(80GA, HF534) Effective date. This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 4 and 29.

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CHAPTER 107

UNIFORM TERMS AND CONDITIONS FOR SERVICE CONTRACTS

[Prior to 9/17/03, see 401—Chapter 13]

11—107.1(8,80GA,HF534) Authority and scope. In accordance with Iowa Code section 8.47, this chapter is adopted to provide uniform terms and conditions for departments and establishments to use in service contracts and to provide a mechanism for departments and establishments to seek approval to use in their service contracts special terms and conditions that are not included in this chapter. The terms and conditions generally require departments and establishments to include performance criteria when executing service contracts. Iowa Code section 8.47, which is part of the accountable government Act relating to service contracts, and these rules utilize the definition of “department and establishment” that is found in Iowa Code chapter 8.

11—107.2(8,80GA,HF534) Applicability. This chapter shall apply to all departments and establishments purchasing services unless otherwise provided by law.

11—107.3(8,80GA,HF534) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Department and establishment*” and “*department*” or “*establishment*” means any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

“*Efficiency measures*” means unit cost or level of productivity associated with a given service, product or activity.

“*Input measures*” means the amount of resources invested, used or spent for services, products or activities.

“*Outcome measures*” means the mathematical expression of the effect on customers, clients, the environment, or infrastructure that reflects the purpose of the service, product or activity produced or provided.

“*Output measures*” means the number of services, products or activities produced or provided.

“*Performance measures*” means measures that assess a service, product or activity. Performance measures include quality, input, output, efficiency, and outcome measures.

“*Quality measures*” means the mathematical expression of how well the service, product or activity was delivered, based on characteristics determined to be important to the customers.

“*Service*” or “*services*” means work performed for a department or establishment or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; architectural services; information technology consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, pharmacists, engineers, and architects; or Ch 107, p.2 Administrative Services[11] IAC 9/17/03

2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government. By way of example and not by limitation, these services may include the following: ambulance service; charter service; boiler testing; bookkeeping service; building alarm systems service and repair; commercial laundry service; communications systems installation, servicing and repair; court reporting and transcription services; engraving service; equipment or machine installation, preventive maintenance, inspection, calibration and repair; heating, ventilation and air conditioning (HVAC) system maintenance service; janitorial service; painting; pest and weed control service; grounds maintenance, mowing, parking lot sweeping and snow removal service; towing service; translation services; and travel service.

“*Service contract*” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. “Service contract” includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering

of services.

“Service provider” means a vendor that enters into a service contract with a department or establishment.

11—107.4(8,80GA,HF534) Uniform terms and conditions for service contracts. All service contracts entered into by a department or establishment shall include, at a minimum, the following terms:

107.4(1) Payment clause. The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party’s performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with 2003 Iowa Acts, House File 534, section 96. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

- a. A payment clause in which the department or establishment describes the limit of the total fee to be paid, and the fee is divided between a base fee and an at-risk fee. The base fee is the amount of fee the service provider will earn for minimal performance in the completion of the contract. The at-risk portion of the fee is the incremental fee the service provider will earn as the service provider meets the performance criteria identified in the contract. The amount of the fee in both instances may be stated in terms of a percentage, an amount, or some other term. Incentives and disincentives may be used to affect the payment of the base fee and the at-risk portion of the fee. The amount of the incentive or disincentive may be stated in terms of a percentage, an amount, or some other term. The payment of the fee shall be based upon the outcomes or outputs achieved or the performance criteria satisfied.
- b. A payment clause based on meeting minimum requirements for performance criteria, outcomes, or outputs with incentives and disincentives to achieve other desired outcomes, outputs or performance criteria. The incentives may be stated in terms of a percentage, a fixed amount, or some other term. Up to 100 percent of the incentive may be placed at risk in order to meet or exceed performance criteria or achieve desired outcomes or outputs. Disincentives may be employed to achieve performance criteria or outcomes. Disincentives may be stated in terms of a percentage, a fixed amount, or some other term. Disincentives may include payments to the department or establishment for performance failures up to 100 percent of the fee the service provider expects to earn from performance of the contract.

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- c. A payment clause based on a straight contingency fee with the entire fee at risk depending on outcomes achieved or outputs obtained or performance criteria satisfied.
- d. A payment clause based on a base fee and an amount retained by a department or establishment to ensure performance criteria described in the contract are satisfied or outcomes are achieved or outputs are obtained. If the vendor meets the performance criteria or outcomes or outputs, then a department or establishment may pay some or all of the portions of the fee retained as an incentive or disincentive and as provided for in the contract.
- e. A payment clause based on a base fee and a contingency fee depending on the outcomes achieved, outputs obtained, or performance criteria satisfied. The base fee may be stated in terms of an hourly fee, a fixed-price fee, or a not-to-exceed fee. The contingency fee may be stated in terms of a percentage of a recovery.
- f. Any other payment clause determined by the department or establishment to be suitable and appropriate for the service contract that bases the amount or basis for paying consideration to the service provider based on the service provider’s performance under the service contract.

107.4(2) Monitoring clause. The contract shall include a clause or clauses describing the methods to effectively oversee the party’s compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable methods of monitoring may include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

- a. One hundred percent inspection.
- b. Random sampling.
- c. Periodic inspection.
- d. Customer input.
- e. Invoices itemizing work performed.

f. A monitoring plan determined by the department or establishment to be appropriate for purposes of the service contract and that includes methods to effectively oversee the service provider’s compliance with the service contract by the department or establishment.

107.4(3) Review clause. The contract shall include a clause or clauses describing the methods to

effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to Iowa Code chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples. The review clause for performance may include:

- a.* Outcome measures.
- b.* Output measures.
- c.* Efficiency measures.
- d.* Quality measures.
- e.* A review plan determined by the department or establishment to be appropriate for the purposes of the service contract and that includes methods to effectively review performance of a service contract.

107.4(4) Other terms. The contract shall include:

- a.* Where appropriate, a nonappropriation clause;
 - b.* A clause describing the duration of the contract;
 - c.* Clauses requiring the service provider to comply with all applicable laws;
 - d.* Where appropriate, an insurance clause;
 - e.* A clause, exhibit, or other document that describes the scope of services to be performed;
 - f.* A termination clause;
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- g.* A default clause, where appropriate;
 - h.* An independent contractor clause;
 - i.* Where appropriate, a clause prohibiting inappropriate conflicts of interest on behalf of the service provider;
 - j.* Other clauses as deemed appropriate by the department or establishment entering into a service contract.

11—107.5(8,80GA,HF534) Special terms and conditions. Rule 107.4(8,80GA,HF534) does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general and the department of administrative services as provided for in Iowa Code section 8.47(2) as amended by 2003 Iowa Acts, House File 534, section 124.

11—107.6(8,80GA,HF534) Exclusions and limitations.

107.6(1) These rules do not apply to contracts for both goods and services when the predominant factor, thrust and purpose of the contract as reasonably stated is for the purchase of goods with service incidentally involved. However, in no event shall departments and establishments designate contracts as contracts for goods to avoid the application of these rules.

107.6(2) These rules do not apply to service contracts utilizing funds that are required to match federal aid allotted to the state by the federal government for highway special purposes.

107.6(3) These rules do not apply to service contracts entered into as the result of an emergency procurement in accordance with 11 IAC 106.8(80GA,HF534), unless the emergency procurement results in the extension of an existing contract that contains performance criteria.

11—107.7(8,80GA,HF534) Effective date. This chapter shall apply to service contracts with a starting date on or after October 1, 2002.

These rules are intended to implement Iowa Code section 8.47 and 2003 Iowa Acts, House File 534, section 4.

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CHAPTERS 108 and 109

Reserved